UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,977	10/17/2001	Steve Dispensa	1574	1819

28004   7590   06/11/2008
SPRINT
6391 SPRINT PARKWAY
KSOPHT0101-Z2100
OVERLAND PARK, KS 66251-2100

EXAMINER
NAWAZ, ASAD M

ART UNIT	PAPER NUMBER
2155	

MAIL DATE	DELIVERY MODE
06/11/2008	PAPER

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/981,977
Filing Date: October 17, 2001
Appellant(s): DISPENSA ET AL.

Sprint Communications Company, L.P.
<u>For Appellant</u>

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/6/06 appealing from the Office action

mailed 4/7/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial

proceedings which will directly affect or be directly affected by or have a bearing on the

Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection

contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is

correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| 6829642 | Giroir et al | 12-2004 |
| 6807515 | Vogel et al | 10-2004 |

6061722   Lipa et al   5-2000

6553568   Fijolek et al   4-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8, 15-18, 21-28, 35-38, 41-48, and 55-58 are rejected under 35

U.S.C. 103(a) as being anticipated by Giroir et al (US Patent No. 6,829,642) further in

view of Vogel et al (USPN 6,807,515).

As to claim 1, Giroir teaches a method of operating a probe device for testing a

broadband wireless system, the method comprising: executing the plurality of tests

wherein the broadband wireless system is located on a client-side (col 2, line 61 to col

3, line 6; col 13, lines 51-55) and the tests are executed to measure performance of the

broadband wireless communication system based on the instruction;(Abstract; col 6,

lines 5-30; col 14, lines 20-25)

determining performance information from the plurality of tests;(col 10, lines 17 -

67)

and storing the performance information in a memory of the probe device.(col 11, lines 15-35 and 39-48)

However, Giroir does not explicitly indicate receiving an instruction into the probe device through a wireless router to execute a plurality of test. Vogel et al teaches a wireless network monitoring system in which an instruction is received into the probe device through a wireless router to execute a plurality of test. (Fig 4 numerals 400-406, col 2, lines 15-23;)

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Vogel et al into those of Giroir to allow the monitoring system and method for measuring wireless service availability and performance to discover problems and allow their correction based on a user's command and parameters especially via widely-available wireless equipment.

As to claim 4, Giroir teaches the method of claim 1 wherein one of the plurality of tests comprises a web surfing test.(col 10, lines 17-67; col 11, lines 30-35)

As to claim 5, Giroir teaches the method of claim 4 wherein the web surfing test comprises transferring a request for a web page and receiving the web page. (col 10, lines 17-67; col 11, lines 30-35)

As to claim 6, Giroir teaches the method of claim 1 wherein one of the plurality of tests comprises a bulk file transfer test. (col 10, lines 17-67; col 11, lines 30-35)

As to claim 7, Giroir teaches the method of claim 6 wherein the bulk file transfer test comprises generating and transmitting a request to retrieve files from a file server and receiving the files from the server. (col 10, lines 17-67; col 11, lines 30-35)

As to claim 8, Giroir teaches the method of claim 6 wherein the bulk file transfer

test comprises transmitting files to a file server. (col 10, lines 17-67; col 11, lines 30-35)

As to claim 15, Giroir teaches the method of claim 1 further comprising

transmitting the performance information from the probe device.(Abstract; col 6, 5-15)

As to claim 16, Giroir teaches the method of claim 1 further comprising retrieving

the performance information from the memory.(Abstract; col 11, lines15-25 and 39-48)

As to claim 17, Giroir teaches the method of claim 1 wherein the performance

information comprises delay.(col 12, lines 3-10)

As to claim 18, Giroir teaches the method of claim 1 wherein the performance

information comprises download speed.(col 10, lines 55-65)

Claims 21-28, 35-38, 41-48, and 55-58 are essentially the software product and

apparatus of the above claim and thus are rejected under similar rationale.

Claims 9-12, 19-20, 29-32, 39-40, 49-52, and 59-60 are rejected under 35 U.S.C.

103(a) as being unpatentable over Giroir et al (US Patent No 6,829642) further in view

of Vogel et al (USPN 6,807,515) further in view of Lipa et al (US Patent No 6,061,722).

As to claim 9, Giroir and Vogel et al teach the method of claim 1 but do not

explicitly indicate one of the plurality of tests comprising a ping test. Lipa et al, however,

teaches the method of claim 1 wherein one of the plurality of tests comprises a ping test

to measure delay (col 2, lines 14-18; col 7, lines 10-50).

It would have been obvious to a person of ordinary skill in the art at the time the

invention was made to incorporate the teachings of Lipa into those of Giroir to make the

system more efficient. Probe devices that test network resources, functionality, and numerous metrics are known in the art. Using one probe device would eliminate the need for multiple devices, their drivers, and many other components that require system resources.

As to claim 10, Giroir and Vogel teach the method of claim 1 but do not explicitly indicate one of the plurality of tests comprising a raw channel capacity test. Lipa et al, however, teaches the method of claim 1 wherein one of the plurality of tests comprises a raw channel capacity test.(col 9, lines 1-60)

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Lipa into those of Giroir to make the system more efficient. Probe devices that test network resources, functionality, and numerous metrics are known in the art. Using one probe device would eliminate the need for multiple devices, their drivers, and many other components that require system resources.

As to claim 11, Lipa et al teaches the method of claim 10 wherein the raw channel capacity tests comprises a bit error rate test. (col 9, lines 1-60)

As to claim 12, Giroir et al teaches the method of claim 1 wherein one of the plurality of tests comprises a forward error correction test. (abstract)

As to claim 19, Giroir and Vogel et al teach the method of claim 1 but do not explicitly indicate the performance information comprising a the number of dropped packets. Lipa et al, however, teaches the method of claim 1 wherein the performance information comprises number of dropped packets.(col 2, lines 14-18)

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Lipa into those of Giroir to make the system more efficient. Probe devices that test network resources, functionality, and numerous metrics are known in the art. Using one probe device would eliminate the need for multiple devices, their drivers, and many other components that require system resources.

As to claim 20, Giroir and Vogel et al teach the method of claim 1 but do not explicitly indicate the performance information being the number of acknowledgment packets. Lipa et al, however, teaches the method of claim 1 wherein the performance information comprises number of acknowledgement packets.(Fig 4; col 9, 10-30)

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Lipa into those of Giroir to make the system more efficient. Probe devices that test network resources, functionality, and numerous metrics are known in the art. Using one probe device would eliminate the need for multiple devices, their drivers, and many other components that require system resources.

Claims 29-32, 39-40, 49-52, and 59-60 are essentially the software product and apparatus of the above claim and thus are rejected under similar rationale.

Claims 13-14, 33-34 and 53-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giroir (US Patent 6,829,642) further in view of Vogel et al (USPN 6,807,515), and further in view of Fijolek et al (US Patent No 6,553,568).

As to claim 13, Giroir and Vogel et al teach the method of claim 1 but do not explicitly indicate one of the plurality of tests comprising an out of lock indicator test. wherein one of the plurality of tests comprises an out of lock indicator test. (col 8, lines 10-40)

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of Lipa into those of Giroir to make the system more efficient. Probe devices that test network resources, functionality, and numerous metrics are known in the art. Using one probe device would eliminate the need for multiple devices, their drivers, and many other components that require system resources.

As to claim 14, Fijolek teaches the method of claim 13 wherein the out of lock indicator test comprises determining a presence of a clean Quadrature Amplitude Modulation signal.(col 8, lines 10-40)

Claims 33, 34 and 53, 54 are rejected for essentially being the software product and apparatus of the above claim and thus are rejected under similar rationale.

(10) Response to Argument

The examiner summarizes the appellant's arguments and addresses them individually.

The appellant argues that; A) neither Giroir nor Vogel teach or suggest a probe device and wireless broadband router located on a customer premises (see brief page 4).

In response to A, Giroir teaches measurement probes being utilized to test the system (see col 5, lines 5-15). The claims as well as the specification allow for the probe device to be a software device (see claim 21). With regard to the probe device and the wireless broadband router being located on a customer premises, Giroir teaches a wireless software Cisco router handling broadband traffic. Giroir states that a *"Network Utility from IBM or CISCO router's offerings are typical server implementations (hardware and software). The "TN3270 Client" software usually runs within the customer's workstation while the "TN3270 Server" software is usually placed in front of the customer's data center mainframes (or sometimes directly within the mainframe itself) or within the customer's branch offices"* (see col 2, line 61 to col 3, line 6). Giroir also discloses that it is desirable in the interest of accuracy to have each device on the same premises (see col 10, lines 4-10). Therefore, Giror and Vogel still meet the scope of the limitations as currently claimed.

The appellant argues that; B) Giroir does not teach or suggest a bulk file transfer test (see brief page 4).

In response to B, it should be noted that the bulk file transfer request only requires the retrieval of only 2 files (see claim 7). It should be appreciated that during the testing phase, a welcome screen file is retrieved (col 10, lines 45-50). This is done

for multiple applications resulting in a bulk file transfer (col 10, line 55-58). Therefore, Giroir still meets the scope of the limitations as currently claimed.

The appellant argues that; C) Giroir does not teach or suggest performance information comprising download speed (see brief page 4).

In response to C), Giroir teaches that "The Probe Client 702 times how long the request/response survey flow takes to establish the connection and to receive the Application Welcome Screen." (see col 10, lines 26-28). This assuredly is a download speed test. Therefore, Giroir still meets the scope of the limitations as currently claimed.

The appellant argues that; D) Lipa does not teach or suggest forward error correction testing (see brief page 4)

In response to D), it should be noted that this test is conducted inherently by numerous protocols. For example, it is widely known and appreciated that the Data Link Layer of the IP protocol (taught in the Giroir abstract) automatically performs error detection and correction. Therefore, the cited references still meet the scope of the limitations as currently claimed.

The appellant argues that E) Fijolek does not teach or suggest an out-of-lock indicator test (see brief page 4).

In response to E), Fijolek conducts an out-of-lock test by ensuring the type of

frequency being used (col 8, lines 10-40).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Asad Nawaz

/Asad M Nawaz/

Assistant Examiner, Art Unit 2155

Conferees:

SPE Saleh Najjar, GAU 2155

/saleh najjar/

Supervisory Patent Examiner, Art Unit 2155

/Ario Etienne/

Supervisory Patent Examiner, Art Unit 2157